IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12130 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAIM KHAN AZIZKHAN PATHAN

Versus

DEPUTY POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 12130 of 2003

MR AA KHAN for Petitioner No. 1

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-2

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 22/09/2004

ORAL JUDGEMENT

In this petition, the petitioner has prayed for quashing and setting aside show cause notice dated 10.12.2002 and also prayed for a direction that the Departmental proceedings initiated vide charge-sheet dated 2.1.2003 should not be proceeded with when for the

same charge, criminal proceedings are pending.

2. It is the case of the petitioner that before the Criminal Court, a charge-sheet has been filed against certain persons including the petitioner on 22.11.2002. The petitioner has contended that for the very same charge, the respondents have issued a charge-sheet dated 2.1.2003 and the respondents are seeking to proceed with the Departmental proceedings, which cannot be permitted until the outcome of the criminal case is declared.

3. In the Departmental charge-sheet dated 2.1.2003, it is alleged inter-alia that the petitioner who is working as a Police Constable had committed serious misconduct by misleading his superior officer and had connived with criminals and in order to save them, he had made an innocent person to confess commission of an offence. It is stated that for a murder committed on 15.5.2002 by some miscreants, the petitioner and those persons had falsely implicated one Mohammed Firosh alias Bakri, but upon investigation it was found that the said Mohammed Firosh alias Bakri was in Police custody on 15.5.2002 when the incident took place and was released on 20.5.2002. It is alleged that the petitioner is involved in the said attempt to mislead the investigation to save the real offenders.

4. The second charge against the petitioner in the said charge-sheet is that on 6.7.2002, he had remained unauthorisedly absent and he had not deposited his service rifle but had kept the same unauthorisedly at the place of his brother. For the above charges, the petitioner was issued the said charge-sheet dated 2.1.2003.

5. Upon perusal of the charge-sheet filed by the Police before the Criminal Court also it can be seen that the allegations against the petitioner are similar to one made against him in the first chance in Departmental charge-sheet dated 2.1.2003.

6. On the basis of these facts, the learned Counsel for the petitioner has contended that it is not permissible for the respondents to proceed further with the Departmental proceedings when a criminal case pertaining to the very same incident is pending in a Criminal Court. He has submitted that the allegations are identical in both the proceedings and the witnesses are also common. He therefore, contends that permitting the respondents to proceed further with the Departmental enquiry would seriously hamper the petitioner in his

defence before the Criminal Court.

7. The learned Counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Tata Oil Mills Co.Ltd. Vs. The Workmen, reported in AIR 1965 SC 155 and contended that in facts of the present case it is desirable that the Departmental proceedings be stayed until the outcome in the criminal case.

8. The question of desirability of staying the Departmental proceedings until the outcome of the criminal case has been examined by the Hon'ble Supreme Court on numerous occasions. The decision in the case of Tata Oil Mills Co.Ltd. (supra) has been considered in number of decisions thereafter. After noting number of decisions on this point, this Court had in a decision dated 13.7.2004, while disposing of Special Civil Application No. 7319 of 2004, made following observations:-

"Law on this point is by now well settled. In the decision reported in AIR 1988 SC 2118 (Kusheshwar v. M/s.Bharat Coking Coal Ltd.), the Hon'ble Supreme Court observed that while there could be no legal bar for simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In para 6 of the said decision, following observations have been made:

"6. The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast,

straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline."

The issue has been considered by the Hon'ble Supreme Court many times thereafter also. In a decision reported in AIR 1997 SC 13 (State of Rajasthan v. B.K.Meena) the Hon'ble Supreme Court considered all earlier decisions on the point and observed that staying of disciplinary proceedings is a matter to be determined having regard to the facts and circumstances of a given case. The Hon'ble Supreme Court further observed that the approach and objective in the criminal proceedings and disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings should not be a matter of course. It will be useful to reproduce some of the observations made by the Hon'ble Supreme Court in the said decision:

"14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced". This ground has, however, been hedged in by providing further that this may be done in cases of grave nature

involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave, but that the case must involve complicated questions of law and fact. Moreover, 'advisability' 'desirability' or 'propriety' as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. (AIR 1960 SC 806) and Tata Oil Mills (AIR 1965 SC 155) is not also an invariable rule. It is only a factor which will go in the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advise and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is inquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent official also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely, that is for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors for and

against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and decision taken keeping in view the various principles laid down in the decisions referred to above.

15. We are quite aware of the fact that not all the disciplinary proceedings are based upon true charges; some of them may be unfounded. It may also be that in some cases, charges are levelled with oblique motives. But these possibilities do not detract from the desirability of early conclusion of these proceedings. Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him.

xxxxxxx
xxxxxxx

17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

A similar issue once again came up before the Hon'ble

Supreme Court and it was decided in the decision reported in AIR 1997 SC 2232 (Depot Manager, A.P.S.R.T. Corpn. V. Mohd. Yousuf Miya). Relying on the case of B.K. Meena (supra), the Hon'ble Supreme Court observed that there would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Following observations of the Hon'ble Supreme Court in para 6 can be noted :

> ..... We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to law down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted, it should be in accordance with proof of the offence as per the evidence defined under the provisions of Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental

proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, the prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence is also different from the standard point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under sections 304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings."

In yet another decision of the Hon'ble Supreme Court reported in AIR 1999 SC 1416 (M. Paul Anthony v. Bharat Gold Mines Ltd.), the above decisions came up for consideration and after examining the law on the point, the Hon'ble Supreme Court noted the conclusion which are deducible from various decisions on the point and observed as follows:

"22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case

against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the chargesheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

From the above decisions of the Hon'ble Supreme Court, considering the case of desirability of staying the departmental proceedings till the criminal case against the Government servant is over, it can be seen that the departmental proceedings and criminal case can be proceeded simultaneously and there is no bar in they being conducted simultaneously. It would be desirable to stay the departmental proceedings till the conclusion of the criminal case if the charge in the criminal case against the delinquent employee is of grave nature which involves complicated questions of law and fact. Even in such a case, the situations cannot be considered in isolation to stay the departmental proceedings and due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

Thereafter also in recent decisions, the Hon'ble Supreme Court has made similar observations in the

decisions reported in 2004 AIR SCW p. 4558 and 2004 AIR SCW p.4587.

9. From the above discussion it can be seen that Departmental proceedings in criminal case can be proceeded simultaneously and there is no bar in conducting the same together. It would be desirable to stay the Departmental proceedings till the conclusion of the criminal case, if the charge in the criminal case against the delinquent employee is of grave nature involving complicated questions of law and fact. Even in such a case the situation cannot be considered in isolation to stay the proceedings and due regard has to be given to the fact that Departmental proceedings cannot be unduly delayed.

10. Considering the above judicial principles and applying the same to the facts of the present case, it is not possible to categorise the charges levelled against the petitioner in the Departmental proceedings being such as would involve complicated questions of law and fact. I have outlined the nature of allegations made against the petitioner in the Departmental enquiry. It can be seen from the allegations that the petitioner is alleged to have connived with offenders and to save them, has implicated an innocent person in an offence as serious that of murder. Therefore, though the charge against the petitioner is grave, I do not find that the same involves complicated questions of law and fact. As observed earlier, the question of desirability of staying the Departmental proceedings against a delinquent Government servant until the outcome of the criminal case cannot be considered in isolation and has to be decided having regard to the fact that the Departmental proceedings cannot be unduly delayed. As observed by the Hon'ble Supreme Court in the decision of M. Paul Anthony V. Bharat Gold Mines Ltd. (AIR 1999 SC 1416), it is necessary that if the criminal case does not proceed or is being unduly delayed, the Departmental proceedings even if they are initially stayed, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

11. In the present case, the petitioner who is a Police Officer is alleged to have connived with criminals and tried to save them from offence as serious as that of murder. If the charges against the petitioner are not correct, his honour must be restored and he must be rid of all stigma of pendency of Departmental enquiry. If on

the other hand the petitioner is guilty of the charges levelled against him, the Department must be permitted at the earliest to award appropriate penalty. A Police Officer is expected to have high integrity and when he is entrusted with the task of protection of life and liberty of the citizens, it would be against the interest of administration to prevent the respondents from concluding the Departmental enquiry involving charges of the kind that are alleged against the petitioner in the present charge-sheet. The fact that stay was granted earlier against proceeding further with the Departmental enquiry nearly one year back, and there does not seem to be any further progress made in the criminal case is one more ground that convinces me to vacate the stay and permit the respondents to continue with the Departmental proceedings.

12. In the result and in view of the judicial pronouncements noted hereinabove, I find that the petitioner has not made out a case for staying the Departmental proceedings until finalisation of the criminal case. The petition therefore fails and is hereby rejected. Rule is discharged with no order as to costs. Interim relief is vacated.

(Akil Kureshi, J.)

*/Mohandas